

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN LUIS OBISPO COUNTY OFFICE OF
EDUCATION and SAN LUIS OBISPO
JUVENILE PROBATION DEPARTMENT.

OAH CASE NO. 2014020743

ORDER GRANTING REQUEST FOR
RECONSIDERATION AND
CLARIFYING ORDER GRANTING
MOTION FOR STAY PUT

On March 24, 2014, Student filed a motion for stay put with the Office of Administrative Hearings (OAH) against the San Luis Obispo County Office of Education (County). On March 27, 2014, County filed an opposition. On April 1, 2014, Student submitted a reply brief.

On April 3, 2014, the undersigned issued an order granting Student's motion for stay put ordering County to maintain Student's placement and service by providing an educational program comparable to his June 27, 2013 individualized education program (IEP) while at Juvenile Hall.

On April 4, 2014, Student filed a request with OAH seeking to clarify the order granting motion for stay put as the order failed to address County's intent to graduate student and thus exit him from special education and related services during the pendency of the current dispute. Student's request for clarification is deemed by OAH to be a motion for reconsideration.

On April 8, 2014 County filed an opposition to Student's motion for reconsideration and Student filed a response to the opposition the same day. As discussed below, the motion for reconsideration is granted.

APPLICABLE LAW

Stay Put

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree

otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)¹; Ed. Code, § 56505 subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

Courts have recognized that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. Sex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) A student is not entitled to the identical services pursuant to his or her IEP when those services are no longer possible or practicable. (*Ibid.*, at pp. 1133-1134.) When a student’s “current educational placement” becomes unavailable, the local educational agency must provide the student with a similar placement in the interim. (See *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533.)

Application of the stay put provision does not ordinarily depend on whether the underlying suit is meritorious. Stay put “represents Congress' policy choice that all [children with a disability], regardless of whether their case is meritorious or not, are to remain in their current educational placement until the dispute with regard to their placement is ultimately resolved.” (*Susquenita Sch. Dist. v. Raelee S.* (3d. Cir. 1996) 96 F.3d 78, 82-83.)

Stay put may apply when a child with a disability files for a due process hearing on the issue of whether graduation from high school (which ends Individuals with Disabilities Education Act (IDEA) eligibility) is appropriate. (*Cronin v. Bd. of Educ. of East Ramapo Cent. Sch. Dist.* (S.D.N.Y. 1988) 689 F.Supp. 197, 202 fn. 4, 203 (*Cronin*); see also *R.Y. v. Hawaii* (D. Hawaii February 17, 2010, Civ. No. 09-00242) 2010 WL 558552, **6-7 (*R.Y.*).) Stay put applies because if it did not, schools would be able to end special education eligibility for students by unilaterally graduating them from high school. Thus, the decision by a school district or a local educational agency to graduate a student with a regular high school diploma constitutes a change in educational placement that triggers all of the procedural protections under the IDEA. (*Ibid.*); 34 C.F.R. §300.102(a)(3)(iii); Ed. Code § 56026.1(a).)

A district is required to provide written notice to the parents of the child whenever the district proposes to initiate or change, or refuses to initiate or change, the identification,

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. (20 U.S.C. §1415(b)(3).) This includes a student's graduation with a regular diploma and exit from high school as the graduation constitutes a change in placement due to the termination of services upon graduation. (34 C.F.R. 300.102(a)(3)(iii).)

Reconsideration

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

DISCUSSION AND ORDER

In OAH's order dated April 4, 2014, granting Student's motion for stay put, the undersigned found that Student is entitled to stay put and that his placement and services during the pendency of the current dispute must be based on his June 27, 2013 IEP, including 360 minutes per day of specialized academic instruction provided by a credentialed special education teacher, transition services, and two 60 minutes per week of individual counseling.

Student has filed this motion for reconsideration so that OAH can specifically address the question of whether County may graduate Student while at Juvenile Hall and during the pendency of the current due process proceedings. In its opposition to Student's motion for reconsideration, County contends that it has not graduated Student, and has not proposed graduating Student. Thus, County argues that the issue of Student's graduation while at Juvenile Hall is not ripe for adjudication. County is incorrect that Student has to wait until he is graduated before he can challenge his pending graduation while at Juvenile Hall which was discussed at the March 19, 2014 IEP team meeting.

Accordingly, Student's request for reconsideration is proper, timely made and is granted. Student has shown new and different facts, and circumstances justifying reconsideration. That is, the order granting reconsideration is unclear regarding whether County may graduate Student and/or exit him from special education and related services during the pendency of the current dispute. Because Student has challenged County's plan for graduation, County may not change Student's educational placement by graduating him during the pendency of the current dispute. Student must remain in his stay put placement until the current due process hearing procedures are completed.

ORDER

1. Student's request for reconsideration is granted.
2. The order dated April 3, 2014 issued by the undersigned is clarified and/or corrected as follows:
 - a. Student's motion for stay put is granted. Pursuant to his IEP dated June 27, 2013, Student shall receive 360 minutes per day of specialized academic instruction provided by a credentialed special education teacher, transition services, and two 60 minutes sessions per week of individual counseling services as similar or comparable educational program while at Juvenile Hall.
 - b. County shall not graduate Student or change his placement during the pendency of the current dispute.

IT IS SO ORDERED.

DATE: April 10, 2014

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings